

FILED BY *Jep* D.C.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT R. PATROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

UNITED STATES OF AMERICA,

Plaintiff,

Case No.: 04-20127 D

v.

JEROME REED,

Defendant.

ORDER DENYING MOTION TO REOPEN PROOF

Before the Court is the motion of the United States to Reopen the Proof in the above cause.

As grounds for the motion, the United States states:

- On November 29, 2004, the defendant filed a Motion to Reopen and Reconsider Order Denying Motion to Suppress Evidence. This motion was granted.
- On March 11, 2005, the defendant was allowed to present the testimony of Melvin Sugars. During this hearing, material information was presented to the Court regarding the facts of the stop, i.e., the tinted windows of the car. Prior to the hearing, the United States was unaware of the nature of the testimony sought to be introduced by the defendant. Therefore, the government did not present any rebuttal proof.
- Due to the length of time between the hearings, the Court allowed the parties the opportunity to review the previous suppression hearing transcript, prior to submitting written briefs on the issues. A review of the transcripts revealed that the issue of the tinted windows was never addressed by the government or the defendant in the first hearing.
- After interviewing witnesses, the government has received information which would directly rebut the testimony of Mr. Sugars.

In response to the United States' Motion to Reopen the Proof, Defendant filed an objection in response thereto.

Upon review of the motion and responses, the Court finds that cause does not exist to grant relief. The facts surrounding the stop were placed in issue in Defendant's Motion to Suppress. At the hearing, the United States presented proof through a witness that the officer "observed the driver of the Isuzu Rodeo not wearing a seatbelt from three to four car lengths away." The United States did not ask the witness any questions regarding the windows of the vehicle, a factor relating directly to the witness powers of observation. At the close of the proof, defense counsel stated on the record their unsuccessful efforts to locate Mr. Sugars, the driver. The subsequent location of Sugars constituted cause to reopen the proof since he was the driver of the vehicle, and was unavailable at the initial hearing. At the close of the proof, the United States indicated that it had no rebuttal proof.

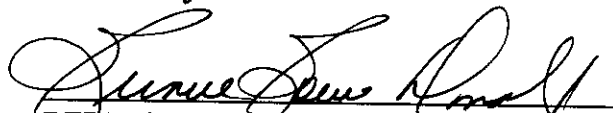
Considering the applicable law governing reopenings, *United States v. Carter*, 374 F.3d 399 (6th Cir. 2004), the Court finds that reopening the proof at this juncture would be highly prejudicial to the Defendant. The United States had every opportunity to present proof of the automobile windows at the initial hearing, but failed to do so. Further, the issue of window visibility, (tinting), was a foreseeable issue based on Defendant's motion. Finally, the United States has not proffered proof to the Court to support its requested relief. *See United States v. Alexander*, 948 F.2d 1002, (6th Cir. 1991).

Accordingly, the Motion to Reopen Proof is **DENIED**. The proof proffered by the United States was apparently available during the initial hearing.

The parties must submit any briefs on the Motion to Suppress on or before May 18, 2005.

Thereafter, the Court will decide the motion.

IT IS SO ORDERED this 4th day of May, 2005.


BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 59 in case 2:04-CR-20127 was distributed by fax, mail, or direct printing on May 9, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT